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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,934	01/30/2004	Yoshihiro Ochiai	018842.1288	3958

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BAKER BOTTS LLP  
C/O INTELLECTUAL PROPERTY DEPARTMENT  
THE WARNER, SUITE 1300  
1299 PENNSYLVANIA AVE, NW  
WASHINGTON, DC 20004-2400

EXAMINER
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HAMO, PATRICK

ART UNIT	PAPER NUMBER
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3746

NOTIFICATION DATE	DELIVERY MODE
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05/22/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptocorrespondence@bakerbotts.com  
darlene.hoskins@bakerbotts.com  
oneka.davis@bakerbotts.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/766,934	<b>Applicant(s)</b> OCHIAI, YOSHIHIRO	
	<b>Examiner</b> PATRICK HAMO	<b>Art Unit</b> 3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This action is in response to a request for reconsideration filed on April 14, 2008.

#### ***Response to Arguments***

Applicant's arguments, see pages 3-6, filed April 14, 2008, with respect to the rejection(s) of claim(s) 1-3, 5-9 and 11-14 under 35 U.S.C. 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.

However, upon further consideration, a new ground(s) of rejection is made in view of different interpretation of the previously applied reference.

Applicant's request for reconsideration of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7-8 and 13-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 7 and 13 include limitations drawn to a pressure receiving portion that "presses said throttling valve in a direction to be opened when it receives downstream side pressure." However, this is both counter-intuitive and contrary to that which is

disclosed in the specification, where pressure receiving portion "11e" urges throttling valve to open in response to an upstream-side pressure. For purposes of examination, the disclosed version will be assumed. Appropriate correction or clarification is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 7, 8, 13-16 rejected under 35 U.S.C. 102(b) as being anticipated by Ota.

#### In regards to claim 1:

Ota discloses a control valve system for a variable displacement swash plate compressor (see fig. 1) including a valve portion V1 (see embodiment of fig. 7) that is interpreted as a throttling valve and a second valve portion V2 that is interpreted as a constant differential pressure valve. When solenoid coils 71 are energized, rod 80 protrudes into valve seat 61, opening the throttling valve to a certain degree based on external information detecting means (see, for example, col. 6, ll. 35-43), allowing crank chamber 5 fluid into the suction chamber 21. When the pressure difference between the suction chamber and crank chamber is reduced, bellows 62 expand and push down the rod 80 to open valve portion V2, introducing fluid from discharge chamber 22 into the

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crank chamber. Solenoid valve V3 constitutes the control means for determining the opening degree of the throttling valve.

In regards to claim 2:

As rod portion 81 is required to press into the valve seat to open throttling valve, it is reasonable to consider it as part of the throttling valve assembly. Thus, it is integral with rod portion 84, which constitutes the constant differential pressure valve. As mentioned above, electromagnetic valve portion V3 controls the throttling valve, and it is also reasonable to interpret this as part of the throttling valve.

In regards to claims 3, 5, 6, 9, 11 and 12:

Chamber 73, from where discharge gas flows into the crank chamber, is directly upstream of the throttling valve and includes tangential inlets 77.

In regards to claims 7, 8, 13 and 14:

Bellows 62, as part of the throttling valve, senses a pressure difference between  $P_c$  and  $P_s$ , constituting the upstream and downstream positions of the throttling valve. Therefore, the bellows acts as both an upstream and downstream-side pressure receiving portion.

In regards to claims 15 and 16:

Temperature sensors 34-36 provide information relating to the thermal load of the compressor, and the ECU shown in fig. 2 provides information about the state of the engine (col. 6, ll. 35-43).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ota in view of Hayashi et al., US Pub. No. 2003/0031569 as presented in the prior action.

Ota discloses all of the limitations substantially as claimed except for the following: a cutoff valve disposed on the downstream side of the throttling valve.

However, Hayashi teaches a variable displacement compressor with a cutoff or check valve 38 downstream of the discharge chamber 132 and control valve 41 that is urged to stop when the inclination angle of the swash plate 23 is at a minimum (in which case the air compressor is not operating), which stops the circulation of the refrigerant gas (p. 3, paragraph 38).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the variable displacement compressor of Ota with the check valve of Hayashi to stop a refrigerant circulation when the compressor is not operating.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PATRICK HAMO whose telephone number is (571)272-3492. The examiner can normally be reached on M-F 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on 571-272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Devon C Kramer/  
Supervisory Patent Examiner, Art  
Unit 3746

/Patrick Hamo/  
Patent Examiner, AU 3746